

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

UNITED STATES OF AMERICA,

VS.

CIVIL ACTION NO. 1:07CR176-P-D

PETER BERNEGGER,

DEFENDANT.

ORDER

This matter comes before the court upon Defendant Peter Bernegger’s Motion [122] to Sever Pursuant to Rules 8(b) and 14. After due consideration of the motion and the response filed thereto, the court finds as follows, to-wit:

Trying multiple defendants together is very common, especially in conspiracy cases. Rule 8(b) provides in pertinent part that “[t]wo or more defendants may be charged in the same indictment ... if they are alleged to have participated ... in the same series of acts or transactions constituting an offense or offenses.” Fed. R. Crim. P. 8(b); *U.S. v. Posada-Rios*, 158 F.3d 832, 863 (1998). Generally, “persons indicted together should be tried together, especially in conspiracy cases....” *Id.*, *U.S. v. McCord*, 33 F.3d 1434, 1452 (5th Cir. 1994); *U.S. v. Arzola-Amaya*, 867 F.2d 1504, 1516 (5th Cir. 1989); *U.S. v. McGuire*, 608 F.2d 1028, 1031 (5th Cir. 1979). It is undisputed that Defendants Bernegger and Finch are alleged in Counts 1 and 5 to have participated in the same series of acts or transactions constituting the offenses of wire fraud and conspiracy, respectively.

A “[s]everance under [Rule] 14 is an appropriate remedy for a disparity in the evidence only in the most extreme cases.” *U.S. v. Harrelson*, 754 F.2d 1153, 1175 (5th Cir. 1985). Furthermore, “the mere presences of a spillover effect does not ordinarily warrant severance.” *U.S. v. Faulkner*, 17 F.3d 745, 759 (5th Cir. 1994).

Appropriate cautionary jury instructions will assuage any threat of unfair prejudice to the defendants posed by being tried together. Because Defendant Bernegger has not demonstrated that denial of a severance will deny him a fair trial, the court concludes that his motion to sever should be denied.

SO ORDERED this the 27th day of October, A.D., 2009.

/s/ W. Allen Pepper, Jr.
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE